

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Dec 18, 2014

Action Requested By: _____

Agenda Type: Resolution

Subject Matter:

Resolution consenting to the approval of settlement agreement in Dawson Building Contractors lawsuits.

Exact Wording for the Agenda:

Resolution consenting to the approval of a settlement agreement among the Public Building Authority, Dawson Building Contractors, Inc., and the design parties 2WR Holmes-Wilkins Architects, Inc., W. Michael Watson, Michael Rutland, Davis Engineering, Inc., and Gordon Davis.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: Dec 18, 2014

RESOLUTION NO. 2014-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby, authorized to execute that Settlement Agreement (for the sole purpose of evidencing the City of Huntsville's consent to, and approval of, the Settlement Agreement) by and among the Public Building Authority of the City of Huntsville, Alabama, Dawson Building Contractors, Inc., 2WR Architects, Inc., 2WR Holmes Wilkins Architects, Inc., W. Michael Watson, Michael Rutland, Davis Engineering, Inc., and Gordon Davis, which said Agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Settlement Agreement and Mutual Release," consisting of thirteen (13) pages including Addendum, with the date of December 18, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council. An executed copy of said document, after being signed by the Mayor, shall be permanently kept on file in the Office of the City-Clerk Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 18th day of December, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 18th day of December, 2014.

Mayor of the City of Huntsville,
Alabama

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

DAWSON BUILDING CONTRACTORS, INC.,)
)
)
Plaintiff,)
)
v.) Civil Action No.: 2006-1887-DSP
)
THE PUBLIC BUILDING AUTHORITY OF)
THE CITY OF HUNTSVILLE, ALABAMA, *et*)
al.,)
Defendants.)

Consolidated With

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

THE PUBLIC BUILDING AUTHORITY OF)
THE CITY OF HUNTSVILLE, ALABAMA,)
)
Plaintiff,)
)
v.) Civil Action No.: 2006-1943-KKH
)
DAWSON BUILDING CONTRACTORS, INC.,)
et al.,)
)
Defendants.)

**SETTLEMENT AGREEMENT
AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release ("Agreement"), consisting of five pages, (excluding signature pages) is lawfully created and executed by the following parties to this Agreement (collectively, the "Parties"): Public Building Authority of the City of Huntsville, Alabama ("PBA"), and Dawson Building Contractors, Inc. ("Dawson"), in favor of 2WR Architects, Inc., 2WR Holmes Wilkins Architects Inc. ("2WR"), W. Michael Watson, Michael Rutland, and Davis Engineering, Inc., and Gordon Davis ("Davis Parties") (collectively "the Design Parties"). The effective date of the Agreement shall be the date when the Huntsville City Council, by majority vote, passes a resolution approving the settlement ("Effective Date").

RECITALS

A. WHEREAS, the PBA and Dawson asserted claims, or could have asserted claims, against the Design Parties in civil actions styled Dawson Building Contractors, Inc., v. Public

Building Authority of the City of Huntsville, Alabama, Civil Action Number: 2006-1887-DSP, and The Public Building Authority of the City of Huntsville, Alabama, v. Dawson Building Contractors, Inc., Civil Action Number: 2006-1943-KKH, which are currently pending in the Circuit Court of Madison County (the "Civil Actions") related to the Huntsville/Madison County Jail Project (the "Project").

B. WHEREAS, in the Civil Actions, the Design Parties denied the material allegations of the PBA's claims and asserted various affirmative defenses.

C. WHEREAS, 2WR, W. Michael Watson and Michael Rutland are insured under a policy of insurance, Policy No. QP03805397 issued by St. Paul Fire and Marine Insurance Company d/b/a/ St. Paul/Travelers ("St. Paul").

D. WHEREAS, the Design Parties have represented that the claims asserted by the PBA and Dawson far exceed amounts available to satisfy those claims through insurance, or personal or business assets of the Design Parties.

E. WHEREAS, Gordon Davis has made certain representations concerning his ability and the ability of the Davis Parties, *inter alia*, to satisfy any judgment, upon which the PBA and Dawson have relied in agreeing to settle with Davis for an amount far lower than they would have accepted otherwise.

F. WHEREAS, the Design Parties, the PBA, and Dawson wish to avoid the time, expense, and diversion of time and effort involved in continuing to litigate the claims in the Civil Actions.

G. WHEREAS, in an effort to completely, fully, and forever resolve any and all disputes between them, the Design Parties wish for the PBA and Dawson to execute this Agreement in its favor as evidence of the final resolution of same.

W I T N E S S E T H:

NOW, THEREFORE, in consideration of the premises and covenants contained in this Agreement, and other good and valuable consideration, the Design Parties, the PBA, and Dawson agree as follows:

1. Recitals. The Design Parties acknowledge, represent, and declare that the recitals set forth in the "WHEREAS" clauses above are true and correct to the best of their knowledge and belief.

2. Payment of Settlement Funds. In consideration of the release by the PBA and Dawson and their agreement to dismiss them, *pro tanto*, from the Civil Actions as set forth in this Agreement, St. Paul, as the insurer for 2WR, W. Michael Watson, and Michael Rutland agrees to pay the total sum of Eight Hundred twenty-eight thousand, two hundred fifty-two dollars and 64/100 (\$828,252.64) (collectively "the Settlement Funds") to the trust account of mediator Marty Van

Tassel, which the Design Parties represent and affirm constitutes all of the remaining proceeds available under their various insurance policies, and relying upon that representation and affirmation, the sufficiency of which is expressly acknowledged by the PBA and Dawson. Payment of the Settlement Funds shall be made within a reasonable time not to exceed 30 days after approval of this settlement agreement by the Huntsville City Council. Such payment shall be by check made payable to Upchurch, Watson, White and Max, in the Civil Actions. The Parties understand and agree that the Settlement Funds are compensatory in nature.

3. City Council Approval Required. This settlement between the Design Parties and the PBA memorialized by this Agreement is expressly subject to and contingent upon approval by the Huntsville City Council at a regularly-scheduled public meeting. As such, the obligations of the PBA and Dawson under this Agreement shall not be deemed final, operative, binding, or enforceable until such time as the Huntsville City Council, by majority vote, passes a resolution approving the settlement (the "Effective Date"). In the event the Huntsville City Council declines to approve the settlement, the Agreement is null and void in all respects.

4. Denial of Liability or Wrongdoing. The Parties understand and agree that this is a settlement and compromise of disputed claims and is not to be considered any admission of liability by the Design Parties, collectively or individually. To the contrary, it is understood and agreed that the Design Parties generally deny any and all liability to the PBA and/or Dawson, and specifically deny the validity of all of the claims asserted by the PBA and/or Dawson in the Civil Actions.

5. Release. The PBA and Dawson, in consideration of the payment of the Settlement Funds and relying on the representations made by the Davis Parties, hereby release, remise, acquit, and forever discharge the Design Parties, individually and collectively, St. Paul (and Travelers Insurance Co., as successor to St Paul) with respect to Policy No. QP03805397 only, and as applicable, each of its parent, subsidiary, and affiliated companies, each of its predecessors, successors, officers, directors, and partners, employees, agents, representatives and attorneys from any and all claims, damages, demands, costs, expenses, liabilities, attorneys' fees, actions, causes of action, or suits of any nature whatsoever, whether legal or equitable, that the PBA and/or Dawson have or may have, whether known or unknown, concealed or hidden, suspected or unsuspected, against the Design Parties only, arising out of or relating the Project, including, but not limited to, any and all claims and requests for relief that were asserted or could have been asserted in the Civil Action, with the exception of any potential claim Dawson and the Davis Parties may have between them, as provided in the Confidentiality Agreement between them. Notwithstanding the above, the PBA and Dawson do not release or discharge any claims against any named party, or their sureties or insurers, to the Civil Actions except as identified by their formal name and as described in this Agreement.

6. Release of Cross-Claims and Counter-Claims. As further consideration for this Agreement Release, the Design Parties and their officers, directors, stockholders, employees, agents, representatives, subsidiaries, affiliated companies, successors, administrators, and assigns further release the PBA and Dawson and their officers, directors, stockholders, employees, agents, representatives, subsidiaries, affiliated companies, successors, administrators, assigns, sureties, and insurers from any and all cross-claims, counter-claims, claims, demands, damages, causes of action,

or suits of any kind which the Design Parties may now have, may have had at any time heretofore, or may have at any time hereafter, arising out of or related to the design, planning, or construction of the Project and all claims which are asserted or could have been asserted in the above-referenced Civil Actions. The Design Parties agree to dismiss any cross-claims, counter-claims, or claims of any kind against the PBA and Dawson in the above-referenced Civil Actions with prejudice, costs taxed as paid.

7. No Release of Other Parties to the Civil Actions. This Agreement does not release claims of the PBA and/or Dawson against or by other parties in the above-referenced Civil Actions who are not a party to this Agreement and are not officers, directors, stockholders, employees, agents, representatives, subsidiaries, successors, administrators, and assigns of the Design Parties. This Agreement does not affect the claims the PBA and Dawson have against each other in the above-referenced Civil Actions. Notwithstanding any other provision in this Agreement, the Parties agree that Dawson, in releasing claims or otherwise adversely impacting claims herein, is not acting in any representative capacity for any subcontractor or supplier on the Project, or any other party, and is not releasing or otherwise adversely impacting any claims on behalf of any other party to the litigation.

8. No Assignment of Claims. The Parties to this Agreement expressly represent and warrant that no claims released in this Agreement have previously been assigned to any other person or entity.

9. Dismissal of Civil Actions. As soon as practicable after final approval by the City Council of the COH, the PBA and Dawson will take all actions necessary to effect the prompt *pro tanto* dismissal, with prejudice, of their claims against the Design Parties in the Civil Actions, with costs (including attorneys' fees) taxed as paid.

10. Applicable Law. This Agreement is deemed created and executed within the state of Alabama, and is to be governed, construed, interpreted, and enforced in accordance with the laws of the state of Alabama.

11. Binding Agreement. This Agreement shall be binding upon, and shall inure to the benefit of, the Design Parties, the PBA, and Dawson, and, as applicable, their respective heirs, representatives, successors, agents, employees and/or assigns.

12. Voluntary Agreement. The Design Parties, the PBA, and Dawson represent and warrant that they have carefully read this Agreement and completely understand its terms, conditions, and effect. Additionally, the Design Parties, the PBA and Dawson represent and warrant that they have signed this Agreement freely and voluntarily, and that in executing same they have not been influenced by any person or entity to any extent whatsoever.

13. Independent Advice of Counsel. The Design Parties, the PBA and Dawson represent and warrant that they are deliberately executing this Agreement, and that in doing so they are relying

solely upon their own judgment, belief, and knowledge, as well as upon the advice and recommendations of their own independently-selected counsel, concerning the terms of this Agreement as well as their rights and duties under it.

14. Interpretation of Agreement. The Design Parties, the PBA, and Dawson agree that this Agreement shall be interpreted according to the plain and ordinary meaning of its terms. Additionally, the Design Parties, the PBA, and Dawson agree that they participated equally in the negotiation and drafting of this Agreement, and consequently, no inference shall be drawn that this Agreement was prepared by any particular party and no ambiguity shall be construed against any particular party.

15. Entire Agreement. This Agreement and the Confidentiality Agreement between the Davis Parties and Dawson constitute the entire agreement of the Design Parties, the PBA, and Dawson, and they supersede any prior understandings, agreements, or representations by or among the Parties to the Agreement, written or oral, to the extent they related in any way to the subject matter of this Agreement.

16. Severability. If any provision of this Agreement is deemed to be invalid or unenforceable under applicable law, this Agreement shall be considered divisible as to such provision and the same shall thereafter be inoperative; provided, however, the remaining provisions of this Agreement shall be valid and enforceable notwithstanding. Additionally, it is understood and agreed that the obligations under this Agreement are separate and independent from one another; therefore, the failure of one party to comply with this Agreement shall not affect the validity or enforceability of the Agreement with respect to any other party.

17. Modification. No oral modification of this Agreement shall be deemed valid or enforceable under any circumstances. Instead, all modifications of this Agreement shall be in writing and signed by the Design Parties, the PBA, and Dawson, or by their respective attorneys.

18. Counterparts. This Agreement may be executed in one or more counterparts. In this event, this Agreement shall not become effective and binding upon the parties until such time as all of the signatories have signed a counterpart.

19. Paragraph Headings. The paragraph headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

The remainder of this page has intentionally been left blank.

Signature pages follow.

IN WITNESS WHEREOF, 2WR Architects, Inc., has executed this Agreement and caused its name to be subscribed as of the date indicated below.

2WR Architects, Inc., and 2WR Holmes Wilkins Architects Inc.

By:

Its:

Date:



PRESIDENT


26 NOV 2014

STATE OF ALABAMA

Montgomery COUNTY

I, the undersigned, a Notary Public in and for Montgomery County, Alabama, hereby affirms that Mike Watson, president of 2WR Architects, Inc., and 2WR Holmes Wilkins Architects Inc., whose name is signed to the foregoing Settlement Agreement and Mutual Release, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, (s)he has the authority to bind 2WR Architects, Inc., and 2WR Holmes Wilkins Architects Inc., and has executed the same voluntarily on the day the same bears date.

SWORN TO AND SUBSCRIBED before me on this the 26 day of Nov., 2014.

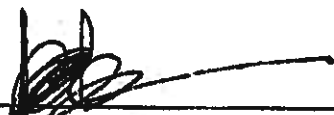


NOTARY PUBLIC

My Commission Expires:

10/01/16

{SEAL}

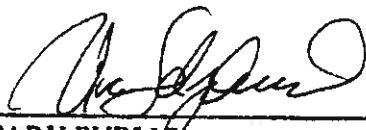


W. Michael Watson
Date: 26 Nov 2014

STATE OF ALABAMA
Madison COUNTY

I, the undersigned, a Notary Public in and for Madison County, Alabama, hereby affirms that W. Michael Watson, whose name is signed to the foregoing Settlement Agreement and Mutual Release, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he has executed the same voluntarily on the day the same bears date.

SWORN TO AND SUBSCRIBED before me on this the 26 day of Nov., 2014.



NOTARY PUBLIC
My Commission Expires: 10/01/16

{SEAL}



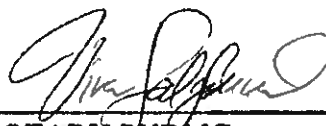
Michael Rutland

Date: 11/25/14

STATE OF ALABAMA
Montgomery COUNTY

I, the undersigned, a Notary Public in and for Montgomery County, Alabama, hereby affirms that Michael Rutland, whose name is signed to the foregoing Settlement Agreement and Mutual Release, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he has executed the same voluntarily on the day the same bears date.

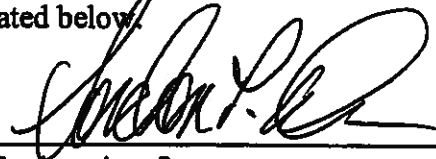
SWORN TO AND SUBSCRIBED before me on this the 25th day of November, 2014.



NOTARY PUBLIC
My Commission Expires: 10/01/2016

{SEAL}

IN WITNESS WHEREOF, Davis Engineering, Inc., has executed this Agreement and caused its name to be subscribed as of the date indicated below.



Davis Engineering, Inc.

By: GORDON L. DAVIS

Its: PRESIDENT

Date: 11/26/14

STATE OF ALABAMA

Montgomery COUNTY

I, the undersigned, a Notary Public in and for Montgomery County, Alabama, hereby affirms that Gordon L. Davis, [position] of Davis Engineering, Inc., whose name is signed to the foregoing Settlement Agreement and Mutual Release, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, (s)he has the authority to bind Davis Engineering, Inc., and has executed the same voluntarily on the day the same bears date.

SWORN TO AND SUBSCRIBED before me on this the 26 day of November, 2014.



NOTARY PUBLIC
My Commission Expires 9/28/2016
My Commission Expires: _____

{S E A L}



Gordon Davis

Date: 11/26/14

STATE OF ALABAMA
Montgomery **COUNTY**

I, the undersigned, a Notary Public in and for Montgomery County, Alabama, hereby affirms that Gordon Davis, whose name is signed to the foregoing Settlement Agreement and Mutual Release, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he has executed the same voluntarily on the day the same bears date.

SWORN TO AND SUBSCRIBED before me on this the 26 day of November, 2014.



NOTARY PUBLIC My Commission Expires 9/28/2016
My Commission Expires: _____

{SEAL}

IN WITNESS WHEREOF, the Public Building Authority of the City of Huntsville, has executed this Agreement and caused its name to be subscribed as of the date indicated below.

Public Building Authority of the City of Huntsville

By: _____

Its: _____

Date: _____

**STATE OF ALABAMA
MADISON COUNTY**

I, the undersigned, a Notary Public in and for Madison, County, Alabama, hereby that affirms that _____, [position] of the Public Building Authority of the City of Huntsville, Alabama, whose name is signed to the foregoing Settlement Agreement and Mutual Release, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, (s)he has the authority to bind the Public Building Authority of the City of Huntsville, Alabama, and has executed the same voluntarily on the day the same bears date.

SWORN TO AND SUBSCRIBED before me on this the _____ day of _____, 2014.

NOTARY PUBLIC
My Commission Expires: _____

{S E A L}

IN WITNESS WHEREOF, Dawson Building Contractors, Inc., has executed this Agreement and caused its name to be subscribed as of the date indicated below.

William J. Dawson
Dawson Building Contractors, Inc.

By: William J. Dawson

Its: Chief Executive Officer

Date: 11/19/2014

STATE OF Alabama
Etowah COUNTY

I, the undersigned, a Notary Public in and for Etowah County, Alabama, hereby affirms that Chief Executive Officer [position] of Dawson Building Contractors, Inc., whose name is signed to the foregoing Settlement Agreement and Mutual Release, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, (s)he has the authority to bind Dawson Building Contractors, Inc., and has executed the same voluntarily on the day the same bears date.

SWORN TO AND SUBSCRIBED before me on this the 19th day of November 2014.

Wm. H. McCallister
NOTARY PUBLIC
My Commission Expires: 02/14/2016

{SEAL}

ADDENDUM TO SETTLEMENT AGREEMENT AND MUTUAL RELEASE

Among and Between the Public Building Authority of the City of Huntsville, Alabama, Dawson Building Contractors, Inc., in favor of 2WR Architects, Inc., 2WR Holmes Wilkins Architects Inc., W. Michael Watson, Michael Rutland, and Davis Engineering, Inc., and Gordon Davis

CITY OF HUNTSVILLE ALABAMA

By: _____

Its: Mayor

Date: _____

**STATE OF ALABAMA
MADISON COUNTY**

On this the 18th day of December, 2014, before me, a notary public, in and for said county and state, personally appeared **Tommy Battle, Mayor of the City of Huntsville, Alabama**, who being placed under oath, acknowledged to me that he has read and understood the foregoing release; he has the authority to bind the City of Huntsville, Alabama, pursuant to a valid resolution passed by the City Council of the City of Huntsville, Alabama; and he is executing same voluntarily as his own free act.

SWORN TO AND SUBSCRIBED before me on this the 18th day of December, 2014.

NOTARY PUBLIC

My Commission Expires: _____

{S E A L}